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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,420	04/05/2001	James E. McGowan, JR.	1489.1001	5040

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EXAMINER
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CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Applicati n N .

09/826,420

Applicant(s)

MCGOWAN,, JAMES E.

Examin r

MONZER R CHORBAJI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

**This final action is in response to the communication received on 10/18/2004**

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 33 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 33, line 9; applicant uses the phrase "without a ported nozzle", however, the specification and the drawings does not teach such a limitation. On page 9 of the Remarks section of the amendment received on 10/18/2004, applicant refer to pages 4-5 and page 15 along with the drawings in order to establish antecedent basis. However, the drawings and the referenced passages disclose "a ported nozzle" not "without a ported nozzle". For example, see page 15, numbered lines 20-21 and figure 7A, 600 and 610. The paragraph bridging pages 4 and 5 provided on page 9 teaches that nozzles not ported nozzle increase the cost of the form, fill and seal equipment and does not teach that nozzles caused problems. The paragraph on page 15 of the specification provided on page 9 teaches pins 600, which on the same page in numbered lines 20-21, it teaches that the pins 600 have gas injection ports. Thus, the

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specification teaches pins with ported nozzles. In addition, the rest of the specification and the drawings do not teach such a limitation.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 33, line 9; applicant uses the phrase "without a ported nozzle", however the meaning of such a limitation is not understood since the specification and the drawings do not disclose such a teaching. Does the applicant intend to mean gas injection pins? Clarification is needed to understand what this phrase mean. In examining this claim, the examiner considers such a limitation to mean a gas injection pin.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 1, 4-7, 15, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan, Jr. (U.S.P.N. 5,749,203).

With respect to claims 1 and 15, the McGowan reference discloses a device (figure 1, 10) and a method (col.1, lines 5-9) for article sterilization. Further, the McGowan reference teaches the following: a device to form a housing in a first web (col.3, lines 27-29), an article loading station (col.3, lines 25-27), an alignment device (col.3, lines 38-42), a sterilization-sealing station for sterilizing a medical article inside the housing (col.3, lines 53-55), and sealing the medical article within the housing (col.4, lines 5-9). In addition the McGowan reference teaches that it is known in the art of sterilizing medical articles to precondition such articles in a pretreatment area by applying steam (col.1, lines 28-34) prior to sterilizing them. Thus, it would have been obvious to one having ordinary skill in the art to modify the method and the apparatus of the McGowan reference to include a preheating step since such a step results in increasing the sterilizing effects of ethylene oxide (col.1, lines 36-44).

With respect to claims 4-5 and 19, the McGowan reference discloses the following: the sterilization-sealing station includes a steam source (col.3, lines 38-46), it is known in the art that substantially no moisture is supplied to the medical articles at the sterilization-sealing station (col.2, lines 42-58), and the pretreatment area has a steam supply (col.1, lines 28-33).

With respect to claims 6-7 and 20-21, the McGowan reference discloses the following: it is known in the art for the sterilization-sealing station includes a vacuum (col.1, lines 50-53) and a controller such that a controller is known in the art to be intrinsic to maintain the pressure in the housing (col.1, lines 52-53). In addition, in the art it is known that a controller is intrinsic to maintaining the pressure in the housing as to allow the relative humidity to be at least 40% during sterilization gas exposure (col.2, lines 57-67).

With respect to claim 18, the McGowan reference discloses injecting steam into the housing (col.10, lines 61-64).

8. Claims 2-3, 8-14, 16-17, and 22-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan, Jr. (U.S.P.N. 5,749,203) in view of Multivac Packing Machines (IDS).

With respect to claims 8, 22, and 33, the McGowan reference discloses a device (figure 1, 10) and a method (col.1, lines 5-9) for article sterilization including the following: a device to form a housing in the first web (col.3, lines 27-29), an article loading station (col.3, lines 25-27), an alignment device (col.3, lines 38-42), a sterilization-sealing station where the article is sterilized by injecting gas between the first and second webs using injection nozzles (figure 4D), and then sealing the housing (col.4, lines 5-9). However, the McGowan reference fails to teach injecting gas by using pins. The disclosure of the Multivac Packing Machines reference teaches injection by using pins (advantages column). Thus, it would have been obvious to one having ordinary skill in the art to modify the McGowan reference method and device to include

gas injection pins in order to eliminate small cracks between webs of film where air can enter packages along with gas are eliminated (column 1, lines 5-10).

The features of claims 2, 16-17, 23, and 35-36 have been addressed above with respect to claims 8, 22, and 33.

With respect to claims 3, 9, and 24, the McGowan reference teaches injecting steam into the housing between the first and second webs (figure 4D and col.10, lines 52-53) and the injected steam pressurizes the housing to a pressure of 60 to 100 Psia (col.10, lines 54-55).

With respect to claims 10 and 29, the McGowan reference discloses that it is known in the art of sterilizing medical articles to have a pretreatment area for heating such articles (col.1, lines 28-33).

With respect to claims 11 and 28, the McGowan reference teaches that both the bottom and the top webs are formed of a gas permeable material (col.3, lines 29-31).

With respect to claim 12, the McGowan reference teaches the following: it is known in the art that substantially no moisture is supplied to the medical articles at the sterilization-sealing station (col.2, lines 42-58) and the prior art teaches that the pretreatment area has a steam supply (col.1, lines 28-33) to supply moisture to the medical articles.

With respect to claims 13-14, the McGowan reference discloses the following: it is known in the art that the sterilization-sealing station includes a vacuum (col.1, lines 50-53) and a controller such that a controller is intrinsic to maintain the pressure in the housing (col.1, lines 52-53). In addition, it is known in the art that a controller is intrinsic

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to maintaining the pressure in the housing as to allow the relative humidity to be at least 40% during sterilization gas exposure (col.2, lines 57-67).

With respect to claim 25, the McGowan reference teaches evacuating the housing before pressurizing with steam (figure 4C). With respect to evacuating the housing after pressurizing with steam, the McGowan reference teaches that after removing the supply of steam then the sterilizing gas is introduced (col.10, lines 64-65). However, since the housing is not sealed yet; removing the supply of steam would inherently result in steam moving out of the housing and in reducing the pressure within the housing.

With respect to claim 26, even though the McGowan reference does not explicitly teach of a time period of maintaining the housing with steam, certainly some time interval is needed to reach the specified steam pressure within the housing (col.10, lines 62-64).

With respect to claim 27, the McGowan reference teaches pressurizing the housing with steam and with sterilizing gas within a form, fill and seal device (10) having sterilization–sealing station (410). With regard to the Btu values, even though the McGowan reference does not explicitly disclose such values, however, the McGowan reference pressurizes the housing with steam to a pressure of 80 Psia such that the McGowan reference is delivering energy that falls within the Btu value range.

With respect to claims 30-32, the McGowan reference discloses the following: it is known in the art that sterilization and sealing are conducted at a sterilization-sealing station (col.2, lines 42-58), the sterilization-sealing station includes a steam source



(col.3, lines 38-46), it is known in the art that substantially no moisture is supplied to the medical articles at the sterilization-sealing station (col.2, lines 42-58), the pretreatment area has a steam supply (col.1, lines 28-33), it is known in the art that the sterilization-sealing station includes a vacuum (col.1, lines 50-53), it is known in the art to maintain the pressure in the housing (col.1, lines 52-53), and it is also known to maintain the pressure in the housing as to allow the relative humidity to be at least 40% during sterilization gas exposure (col.2, lines 57-67).

The features of claim 34 have been addressed above with respect to claims 1 and 15.

### ***Response to Arguments***

9. Applicant's arguments filed 10/18/2004 have been fully considered but they are not persuasive.

On page 10 of the Remarks section, applicant argues that, "This portion of the reference indicates that a preconditioning phase was used based on a once-had belief that ethylene oxide gas performs better at elevated temperatures." The examiner disagrees. The McGowan reference applies ethylene oxide gas at elevated temperature and humidity by using steam. The use of the "thought to be" phrase means that such a fact is already known in the art and does not mean that currently it is invalid.

On page 10 of the Remarks section, applicant argues that, "This portion of the reference indicates that the processes described in the Background of the invention are problematic because they require too much time." The examiner disagrees. The phrase "too much time" is a subjective matter that varies from one person skilled in the art to

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another and is not a teaching against applying neither the pretreatment concept nor a drawback.

On page 11 of the Remarks section, applicant argues that, "The examiner asserts that it would have been obvious to use the Multivac pins in the '203 patent in order to establish a uniformity of gas distribution." The examiner disagrees. The applicant has mistakenly referred to the wrong motivation statement. The correct motivation statement is: it would have been obvious to one having ordinary skill in the art to modify the McGowan reference method and device to include gas injection pins in order to eliminate small cracks between webs of film where air can enter packages along with gas are eliminated (column 1, lines 5-10).

On page 12 of the Remarks section, applicant argues that, "On the other hand, the '203 patent is directed to a very different application, namely sterilization of medical articles." The examiner disagrees. The Multivac reference is a part of a form-fill-and seal device as is the instant application such that insuring that air does not enter into packages by substituting one injection means for another is obvious to one having ordinary skill in the art of sterilization.

On page 12 of the Remarks section, applicant argues that, "Alternatively, does the examiner propose to use the pins instead of the nozzle 446?" The examiner's motivation statement that it would have been obvious to one having ordinary skill in the art to modify the McGowan reference method and device to include gas injection pins in order to eliminate small cracks between webs of film where air can enter packages

along with gas are eliminated (column 1, lines 5-10). The phrase "to including gas injection pins" means to use the pins instead of the nozzle 446.

On page 12 of the Remarks section, applicant argues that, "However, without a ported nozzle is not even mentioned in the rejection." The examiner disagrees. In the office action, pages 2-3, dated 07/01/2004, claim 33 was rejected under 35 U.S.C. 112, second paragraph; however, the applicant has failed to respond to this rejection. On page 3 of the office action, the examiner stated that in considering claim 33, the feature "without a ported nozzle" is equated to the feature "a gas injection pin", which was mentioned on page 5 in rejecting claim 33.

#### ***Conclusion***

**10. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

**11.** A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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